

RICKY J. CALHOON

IBLA 87-546

Decided August 4, 1989

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. ES-33285.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases:  
Offers to Lease

The Board will sustain a BLM decision rejecting a noncompetitive oil and gas lease offer for land situated within the known geologic structure of a producing gas field where the offeror fails to establish by a preponderance of the evidence that the land is not properly considered presumptively productive of gas.

APPEARANCES: Ricky J. Calhoon, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Ricky J. Calhoon has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated February 24, 1987, rejecting his noncompetitive oil and gas lease offer ES-33285 because the land sought had been determined to be within the known geological structure (KGS) of a producing oil or gas field.

On June 18, 1984, in response to a June 1, 1984, BLM decision declaring him a successful bidder in the September 1983 simultaneous oil and gas lease drawing, Calhoon submitted a noncompetitive oil and gas lease offer for 1,230 acres of acquired land situated in Johnson County, Arkansas. The land sought is specifically described as the N\, SW^, N\ SE^ and SW^ SE^ sec. 27, E\ NW^ NE^ SW^ and SE^ sec. 28, W\ sec. 33 and NW^ NE^ SW^ and S\ NE^ SW^ sec. 34, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas.

By memorandum dated April 4, 1986, the District Manager, Southeast District, Eastern States Office, notified the State Director, Eastern States Office, that the land in sec. 28, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas, which encompassed land included in Calhoon's lease offer, had been determined to be within the Batson-Low Gap Field KGS effective March 31, 1986. Thereafter, by decision dated November 19, 1986, BLM rejected Calhoon's lease offer to the extent that it encompassed land

situated within the KGS. The record indicates that Calhoon was served with a copy of the November 1986 BLM decision on November 21, 1986. However, there is no record that Calhoon filed a notice of appeal of that decision within 30 days of receipt of the decision, as required by 43 CFR 4.411(a). Accordingly, the Board has no jurisdiction to entertain an appeal of that decision. Ahtna, Inc., 100 IBLA 7, 15 (1987). Nevertheless, we note that, even if we considered the propriety of that decision, we would conclude, as we do with respect to the February 1987 BLM decision, that BLM properly rejected Calhoon's noncompetitive oil and gas lease offer to the extent that it encompassed land situated within the KGS.

By memorandum dated September 29, 1986, the Assistant District Manager for Minerals, Jackson District, Eastern States Office, informed the State Director that the remaining land encompassed by Calhoon's lease offer, viz., that land situated in secs. 27, 33, and 34, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas, and other land had been determined to be within the Batson-Low Gap Field KGS effective September 24, 1986, "[b]ased on past drilling activity and established production." In its February 1987 decision, BLM rejected Calhoon's lease offer "as to the lands remaining in the offer" because they are situated in the KGS. On March 23, 1987, Calhoon filed a timely appeal from the February 1987 BLM decision.

In his statement of reasons for appeal (SOR), appellant challenges BLM's inclusion of the land encompassed by his lease offer in the Batson-Low Gap Field KGS on the basis that the land is separated from the productive limit of the KGS by three "dry" wells drilled in secs. 21, 23, and 26, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas. <sup>1/</sup> Appellant states that these wells "penetrated all equivalent productive zones in the field wells" but yet either did not produce or failed to test positive for production from these zones. He reports that the land where these wells are drilled is generally "structurally low to the producing field area." Appellant depicts the productive limit of the Batson-Low Gap Field KGS on a map of the subject and surrounding land attached to his SOR. As depicted, that limit is one mile or more to the north, northeast, and east of the land encompassed by his lease offer.

The basis for BLM's decision to include the land originally encompassed by appellant's lease offer in the Batson-Low Gap Field KGS is reflected in two mineral reports contained in the record. Initially, BLM decided to extend the KGS to include secs. 17, 20, 28, and 29, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas, effective March 31, 1986, based on an April 2, 1986, Mineral Report prepared by a BLM geologist. At that time the KGS included secs. 21, 23, and 26, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas, which were then known to contain wells which were either dry (Revere No. 1 Federal 21 and Ferguson Oil No. 1 Burley) or had had only a slight showing of gas (Tenneco No. 1-23 USA-Ozark).

<sup>1/</sup> These wells are known as the Revere No. 1 Federal 21, Tenneco Oil No. 1-23 USA-Ozark and Ferguson Oil No. 1 Burley.

BLM decided to extend the KGS to encompass the additional sections because they were considered to be presumptively productive of gas in view of the fact that the sections were "nearly surrounded by producing wells or wells with gas shows" from the Atoka, Hale or Boone formations and the zones, which had been determined to be productive, were found to extend across that land (April 1986 Mineral Report at 2). BLM described the productive zones as defined by a combination of structural and stratigraphic or stratigraphic traps. As evidence of surrounding productive capability, BLM relied primarily on five wells drilled immediately to the north, northeast, east, and west of the additional sections in secs. 8, 9, 15, 16, and 19, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas. Finally, BLM assessed the overall risk of drilling a dry hole at 50 percent.

Next, BLM decided to extend the KGS further to include secs. 27, 33, 34, and 35, T. 11 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas, effective September 24, 1986, based on a September 24, 1986, Mineral Report prepared by a BLM geologist. BLM decided to extend the KGS to encompass these sections because they were likewise considered to be presumptively productive of gas, relying on production from wells not only to the north, northeast, east, and west of the land, but also production south and southeast of that land. Thus, BLM noted that producing wells were situated in secs. 10, 11 and 12, T. 10 N., R. 25 W., fifth principal meridian, Johnson County, Arkansas. In addition, BLM relied on its projection of the productive zones found in those wells across that land from those areas of production.

[1] At the time of the February 1987 BLM decision, it was well established that BLM had no authority under section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), prior to its most recent amendment, to issue a noncompetitive oil and gas lease for land which had been determined to be within a KGS and, thus, was required to reject a noncompetitive oil and gas lease offer for such land. 2/ Edward F. Scholls, 109 IBLA 23, 26 (1989), and cases cited therein. Accordingly, to the extent that we conclude that BLM properly designated the subject land as within the Batson-Low Gap Field KGS, we must conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer.

Appellant does not challenge the proposition that BLM was required to reject his lease offer where the subject land had been determined to be within a KGS. Rather, he objects only to BLM's inclusion of the subject land in the KGS. In challenging the KGS designation, appellant bears the burden of showing by a preponderance of the evidence that that designation was in error. Id. at 27.

2/ Section 17(b) of the Mineral Leasing Act was amended on Dec. 22, 1987, by section 5102(a) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (1987), to require that all available lands be initially offered for leasing by competitive bidding. Pending non-competitive oil and gas lease offers are to be processed according to the law prior to its amendment. 101 Stat. 1330-259 (1987).

At the outset, it should be noted that, at the time of the February 1987 BLM decision, a KGS was defined by 43 CFR 3100.0-5(l) (1986) as the "trap in which an accumulation of oil or gas has been discovered by drill-ing and determined to be productive, the limits of which include all acreage that is presumptively productive." As so defined, a KGS constitutes the immediate area actually drilled and discovered to be productive by virtue of being underlain by a structural and/or stratigraphic trap or series of related traps in the same formation containing oil or gas. In addition, the surrounding acreage is properly included in the KGS where it is considered to be "presumptively productive" by virtue of the fact that there is a reasonable probability that it is underlain by an extension of that trap or traps. Edward F. Scholls, supra at 26, and cases cited therein.

Appellant contends that the subject land should not have been included in the KGS because it falls outside the productive limit of the KGS, as that limit is depicted by appellant. However, appellant has provided no geological or geophysical evidence to support his location of the boundary of the productive reservoirs admittedly found within the KGS. At best, appellant alludes to the fact that electrical logs taken in the three wells which he relies upon indicate that the land in which the wells were drilled is "structurally low" compared to the land included in the KGS prior to its March 1986 extension. Assuming this is true, however, the mere fact that the land where the wells were drilled, and presumably also the subject land beyond, is structurally low does not establish that the productive reservoirs within the KGS will not continue across the subject land. Appellant has failed to prove that the fact that the land is structurally lower than land within the KGS means that there exists a boundary to the reservoirs which renders the subject land necessarily not capable of producing any gas.

In the absence of any determinative geologic or geophysical evidence offered by appellant in support of his location of the productive limit of the KGS, appellant's contention that the subject land should not have been included in the KGS because it will not be productive of gas apparently centers on the fact that there are dry holes in close proximity to the land. However, appellant clearly overlooks the fact that there are also producing wells in relatively close proximity to the subject land. See Figure 2 attached to September 1986 Mineral Report.

Moreover, appellant's appeal suggests that there is an area not capable of production extending east, southeast, and south of the purported productive limit of the KGS, which area encompasses the subject land. That suggestion ignores the fact that there is demonstrated production west and south of the subject land and that BLM has projected the continuation of the productive zones from those areas of production across that land. Appellant has made no effort to challenge the import of this evidence.

The existence of dry holes in a generally productive region may simply be indicative of the fact that, although the area is generally underlain by a productive reservoir, there are isolated spots where, because of anomalous structural or stratigraphic factors, gas is not found. See Edward F. Scholls, supra at 30, and cases cited therein. Appellant has demonstrated nothing to the contrary. The fact that the presence of dry holes is not

necessarily indicative of the absence of a productive zone in a particular area is clearly evidenced by the maps depicting gas production attached to BLM's mineral reports. In many cases, a dry hole is drilled in close proximity to a producing well. In these circumstances, the existence of the dry holes does not undercut BLM's conclusion that the subject land is presumptively productive because there is a reasonable probability that it is underlain by a reservoir which has elsewhere been demonstrated to be productive of gas.

Therefore, we conclude that appellant has not established by a preponderance of the evidence that the land encompassed by his noncompetitive oil and gas lease offer is not properly included in the Batson-Low Gap Field KGS, and that BLM properly rejected appellant's lease offer.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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John H. Kelly  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge